

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 3671 of 1988****For Approval and Signature:****HONOURABLE MR.JUSTICE K.A.PUJ**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

T R VIHOL - Petitioner**Versus****STATE OF GUJARAT & 1 - Respondents****Appearance :**

MR JITENDRA M PATEL for Petitioner.

MR LB DABHI, AGP for Respondents.

CORAM : HONOURABLE MR.JUSTICE K.A.PUJ**Date : 14/02/2006****ORAL JUDGMENT**

1.The petitioner has filed this petition under

Article 226 of the Constitution of India praying for quashing and setting aside the final seniority list of the Deputy Mamlatdar which was published on 08.06.1988 wherein the petitioner's name was shown at serial No. 727. The petitioner has also sought for the direction to the respondents to place the petitioner at serial No. 460 in the final seniority list and further direction to the respondents to treat the petitioner at serial No. 460 in the final seniority list and to grant him all the benefits, promotion and other allowances as if the petitioner was shown at serial No. 460 from the date of the application of the said final seniority list.

2.The Court has issued notice on 14.07.1988 and ad-interim relief was granted to the extent that any promotion effected on the basis of the impugned seniority list of Deputy Mamlatdar (Annexure D) of any of the incumbents listed

below serial No. 460 upto serial No. 726 shall be treated and considered subject to result of the petition and this information should be expressly conveyed to the concerned promotee in the order of promotion. The petition was thereafter admitted and rule was issued on 19.12.1988 and it was ordered to be heard along with Special Civil Application No. 3432 of 1988. The Court has also continued the interim relief till further order.

3.Special Civil Application No. 3432 of 1988 was dismissed by this Court on 06.02.2006 on the ground that the petitioner expired long back and no one has moved any application for joining as party and hence, the petition was abated.

4.It is the case of the petitioner that the petitioner has joined the service of the Revenue Department on 02.07.1960 as a Clerk.

The petitioner was promoted as Circle Inspector in the year 1968 and thereafter the petitioner was promoted as Deputy Mamlatdar which is equivalent to Circle Officer on 01.04.1976. It is also the case of the petitioner that the State Government has issued a Provisional seniority list of the Deputy Mamlatdars on 08.09.1987. In the said seniority list, the name of the petitioner was shown at serial No. 708. The said provisional seniority list was prepared on the basis that the persons who had passed Revenue Qualifying Examination within three trials have been shown senior according to their date of joining in the service. Thereafter, the names of the persons who have passed examination beyond the prescribed chances have been shown according to their date of joining the service. Since the petitioner has passed the examination in less than three chances, he has raised his objections vide his letter dated 21.09.1987 against the provisional

seniority list.

5. It is also the case of the petitioner that in October 1968, the petitioner had filled up the form but he was not informed in time regarding the date and place of the examination within time but he was informed on the date of examination i.e. 08.11.1968. The petitioner, therefore, could not appear in the said examination and it was not considered as trial by the Government. In October 1969, the petitioner had again filled up the form for appearing in the examination but the Mamlatdar or the office of the Collector had never informed the petitioner regarding the programme of the examination and other details. The petitioner, therefore, could not appear and it was not considered as chance taken by the petitioner. It is also the case of the petitioner that initially examination was required to be passed within a period of three

years from 1970 but the petitioner was not permitted from 1970 to 1975. He was permitted for the first time in April, 1975. He appeared but failed. The petitioner thereafter appeared in the examination held in April, 1976 and passed the said examination. It is, therefore, submitted that the petitioner has passed the examination within three trials and hence his name should have been placed in the seniority list at the appropriate place i.e. at serial No. 460. The petitioner has made several representations. However, there is no response from the respondents. It is only when the final seniority list was published and the petitioner's name was shown at serial No. 727 instead of 460, the present petition is filed.

6.Mr. Jitendra M. Patel, learned advocate appearing for the petitioner has submitted that the petitioner has passed the examination in less than three chances and within the

prescribed time. Therefore, the petitioner's seniority should have been adopted by treating the petitioner having passed the examination within the prescribed period and prescribed chance. If that was taken into consideration, the petitioner's name was required to be shown at serial No. 460 in the final seniority list. But the respondents have not correctly considered the facts regarding the petitioner's appearing in the examination for the relevant years. He has further submitted that the seniority of the petitioner was not properly shown in the final seniority list by wrongly interpreting relevant provisions of Rules 4,5,7,9 and 12. The respondents have not taken into consideration the provisions of Rule 12 which clearly provides that in certain circumstances, if the person concerned fails to appear in the examination for the reasons beyond his control then that attempt should not be considered as the chance to appear in the

said examination. The petitioner's case was covered under the said Rules in view of the fact that he was not informed in October 1968 and October 1969 to appear in the examination. Therefore, it can be said that the circumstances were beyond the control of the petitioner otherwise he could have appeared at the said examination. Hence, the chances of 1968 and 1969 are straightway required to be ignored. He has, therefore, submitted that the prayers made in the present petition are required to be granted.

7.Mr. L.B. Dabhi, learned Assistant Government Pleader appearing for the respondents has submitted that there is no substance in the present petition. The petitioner has not challenged the action at the appropriate time when the chances were given and not availed of by the petitioner. He has placed reliance on the affidavit-in-reply filed on behalf of the

respondents. He has submitted that the name of the petitioner was shown by the Govt. at the appropriate place in the final seniority list as per the rules of the Revenue Qualifying Examination, 1970. The petitioner did not pass the requisite – Revenue Qualifying Examination within a specified chance and time limit. He has passed the examination in 4th trial. As per Rule 5, within three chances this examination is required to be passed. The petitioner has filled up the form for this examination first time in April, 1968 and after filling up the form, the petitioner has shown his unwillingness as he could not give examination. The petitioner has applied to appear in the examination in October 1969 and he was accordingly informed. The concerned Collector has intimated to every employee to appear in the examination. He has, therefore, submitted that it is not believable that the Mamlatdar did not intimate regarding examination to the

concerned candidates. Even after the examination was over, the petitioner had not made any complaint to the concerned authority about this issue. Hence, the contention which has been raised before this Court is after thought and required to be rejected. The petitioner has filled up the form again in April 1975 and at that time he was under training. The Assistant Director, training center had forwarded the form of the petitioner to appear in the examination in April 1975. The petitioner appeared in the examination but he failed and he cleared the examination in 1976. As the petitioner has already availed three chances, he has paid Rs. 15/- as examination fees and at that time also, the petitioner did not raise any dispute or grievance that it is not his 3rd chance, but first or second chance. He has, therefore, submitted that at this belated stage, after the period of about three decades, the petitioner

cannot raise this dispute or grievance before this Court. As per Rule 7 of Revenue Qualifying Examination Rules, 1970 the requisite amount was paid by him through Challan dated 23.01.1976 and Rs. 15/- was required to be paid on 4th additional chance. He has, therefore, submitted that the amount paid by the petitioner vide challan is considered to be the fees for 4th additional chance. He has, therefore, submitted that the petitioner's name was rightly placed in the seniority list and hence, the said seniority list should not have been disturbed by this Court.

8. After having heard learned advocates appearing for the respective parties and after having considered the pleadings as contained in the petition as well as in affidavit-in-reply and after having gone through the relevant documents, the Court is of the view that the petitioner was not informed at all in time with

regard to the chances given in the year 1968 & 1969. From the facts emerged on record, it becomes very clear that necessary intimation which is required to be given to the petitioner in time so as to appear in the examination, was not given in time and hence, those two chances can never be considered as chances. The petitioner thereafter appeared in the examination in 1975 and he failed. However, in the second chance i.e. in 1976, he has cleared the examination and hence, the petitioner deserves to be considered as a candidate who has cleared his examination within the stipulated chances and stipulated time limit. The petitioner was permitted to appear in the examination after amendment of the Rules for the first time in 1975 and second time in 1976. Thus, the whole basis adopted by the respondents is erroneous. The petitioner's place at the seniority list should have been considered at the place where the persons have

cleared their examinations within the three stipulated chances. If the petitioner's case would have been considered on this line, the petitioner would have been placed at serial No. 460 in the final seniority list and not at serial No. 727. Since the respondents have committed an error in determining the seniority of the petitioner in the final seniority list, the same is required to be corrected and modified. Simply because the petitioner has paid the additional fee of Rs. 15/-, it cannot be said that the same was for 4th additional chance. There is no delay in challenging the action of the respondents as the final seniority list was prepared only in 1988 and immediately, the present petition is filed. It is clear from the affidavit-in-reply filed by the respondents that the petitioner has retired in the year 1996 and hence, necessary monetary benefits should have been given to the petitioner by fixing his seniority at serial

No. 460 in the final seniority list.

9. In the above view of the matter and considering the entire facts and circumstances of the case, the present petition is allowed. The reliefs prayed for in the present petition is granted. The respondents are directed to work out the benefits available to the petitioner by fixing the petitioner's seniority at serial No. 460 and to give him all the benefits as a result thereof within a period of three months from the date of receipt of writ from this Court or from the date of receipt of certified copy of this order, whichever is earlier.

10. Subject to the aforesaid observations and direction, the present petition is allowed. Rule is made absolute without any order as to costs.

[K.A. PUJ, J.]

Savariya